

Message Text

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44

ACTION DLOS-06

INFO OCT-01 EUR-12 EA-07 ISO-00 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FEAE-00 FMC-01 TRSE-00

H-02 INR-07 INT-05 IO-13 JUSE-00 L-03 NSAE-00 NSC-05

NSF-01 OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15

USIA-06 SAL-01 /133 W

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R 060230Z JUL 76

FM AMEMBASSY KUALA LUMPUR

TO SECSTATE WASHDC 3880

INFO AMEMBASSY BANGKOK

AMEMBASSY CANBERRA

AMEMBASSY JAKARTA

AMEMBASSY LONDON

AMEMBASSY MANILA

AMEMBASSY MOSCOW

AMEMBASSY PARIS

AMEMBASSY SINGAPORE

AMEMBASSY TOKYO

C O N F I D E N T I A L SECTION 1 OF 2 KUALA LUMPUR 3826

FROM OXMAN

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS--MALAYSIA (STRAITS AND ARCHIPELAGOS)

1. SUMMARY. MALAYSIANS CONFIRM WILLINGNESS ACCEPT UNIMPEDED
PASSAGE OF STRAITS IF TANKER SAFETY AND LIABILITY PROBLEM
RESOLVED. THEY SEEM SUSPICIOUS OF INDONESIAN MOTIVES IN SEEKING
TO EXCLUDE CIVIL AIRCRAFT FROM ARCHIPELAGIC PASSAGE REGIME, AND
ARE NOT WILLING TO RESOLVE ISSUE OF MALAYSIAN USE OF PORTION
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OF ARCHIPELAGO BETWEEN EAST AND WEST MALAYSIAN SOLELY BY

BILATERAL AGREEMENT. ASSUMING USG PREPARED TO MAKE FAIRLY MINOR CLARIFICATIONS IN STRAITS ARTICLES AND WORK TO FACILITATE MALAYSIAN-JAPANESE AGREEMENT ON PRECISE UNDER KEEL CLEARANCE FIGURE FOR SUBMISSION TO IMCO, IT APPEARS THAT CLOSE AND ACTIVE COOPERATION BETWEEN THE TWO DELEGATIONS ON BOTH STRAITS AND ARCHIPELAGOS IS NOW POSSIBLE. END SUMMARY.

2. AMBASSADOR HOSTED LUNCH FOR ATTORNEY GENERAL KADIR, LAL VORAH, AND DEPT ASST LEGAL ADVISOR OXMAN JULY 2 AS FOLLOW UP ON BRIEF CONVERSATION BETWEEN KADIR AND OXMAN AT AALCC EARLIER IN WEEK.

3. STRAITS: KADIR SAID TALKS WITH JAPANESE STALLED BETWEEN MALAYSIAN PROPOSAL FOR FOUR METER UNDER KEEL CLEARANCE AND JAPANESE PROPOSAL FOR THREE METERS (APPARENTLY THEIR INTERPRETATION OF TWO METERS PLUS ONE METER SQUAT AT 12 KTS). APPARENTLY SOME COMPROMISE BEING SOUGHT BY REDUCING SPEED TO 8 KTS, THEREBY REDUCING SQUAT, AND AVOIDING PASSAGE DURING LOW TIDE WHICH JAPANESE SAY IS COSTLY). EIGHTY TANKERS ARE AFFECTED BY DIFFERENCE BETWEEN THREE AND FOUR METER REQUIREMENT. KADIR NOTED THAT "VOLUNTARY" ARRANGEMENT WITH JAPAN WOULD BE FOLLOWED BY MALAYSIAN LEGISLATION. WE SAID THIS WOULD GIVE US GRAVE DIFFICULTIES OF PRINCIPLE REGARDING UNILATERAL RIGHT OF STRAITS STATE, AND STRONGLY PREFERRED IMCO ROUTE WHICH SHOULD BE NO PROBLEM ONCE AGREEMENT REACHED. KADIR WANTS SPECIFIC LANGUAGE THAT TRAFFIC SEPARATION SCHEMES CAN INCLUDE UNDER KEEL CLEARANCE (ART. 39).

4. ENFORCEMENT OF INTERNATIONAL TRAFFIC SEPARATION SCHEMES IN STRAITS (INCLUDING UNDER KEEL CLEARANCE). KADIR WANTS CLEAR RIGHT TO STOP TANKER THAT EXCEEDS IMCO APPROVED UNDER KEEL CLEARANCE. MOREOVER, VORAH POINTED OUT ANOMALY THAT MALAYSIAN COULD ENFORCE AGAINST INTERNATIONAL DISCHARGE IN VIOLATION OF INTERNATIONAL STANDARDS IN HIGH SEAS AREA OF STRAITS BUT NOT TERRITORIAL SEA AREA. WE SAID ISSUE IS VERY CONTROVERSIAL, AND CONFRONTING IT HEAD ON MIGHT NOT BE EFFECTIVE. SINCE TEXT IS AMBIGUOUS ON POINT WITH RESPECT TO MERCHANT SHIPS, ONE WAY OUT WOULD BE TO CLARIFY THAT SAFEGUARDS SECTION OF POLLUTION CHAPTER

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APPLIES TO STRAITS, THUS LEAVING CLEAR IMPLICATION REGARDING MERCHANT SHIPS. IT WAS AGREED THAT EXCLUSION OF STRAITS FROM POLLUTION CHAPTER IN GENERAL WAS CORRECT BECAUSE ISSUE IS DEALT WITH DIRECTLY IN STRAITS ARTICLES.

5. LIABILITY FOR TANKER SPILLS IN STRAITS. KADIR WANTS FLAG STATE LIABILITY IF TANKER OWNER DOES NOT PAY, CITING EXTREME DIFFICULTIES REGARDING COLLECTION SHOWA MARU

INCIDENT. (FYI. IGUCHI HINTED TO OXMAN THAT GOJ MIGHT SPEED UP COLLECTION IF AGREEMENT REACHED ON UNDER KEEL CLEARANCE. END FYI.) WE NOTED LIKELIHOOD IDEA WOULD BE ATTACKED BY DEVELOPING COUNTRIES HAVING OR DESIRING TO BUILD TANKER FLEET. ON THE OTHER HAND, IT MIGHT BE POSSIBLE TO READ CROSS-REFERENCE TO LIABILITY INTO REFERENCE TO GENERALLY ACCEPTED REGULATIONS, ETC., ON POLLUTION, THUS EVENTUALLY BRINGING IN IMCO LIABILITY AND FUND CONVENTIONS. IN THAT CASE, FLAG STATE WOULD BE UNDER DUTY UNDER LOS CONVENTION TO ENSURE ADEQUATE INSURANCE ARRANGEMENTS--ACHIEVING MUCH OF RESULT KADIR SEEKS WITHOUT GETTING INTO BROADER ISSUE OF FLAG STATE LIABILITY FOR ACTS OF PRIVATE SHIPS PER SE.

6. NEGOTIATIONS ON STRAITS. KADIR REVIVED IDEA OF GROUP TO NEGOTIATE ON STRAITS ARTICLES. WE NOTED MALAYSIAN NOW HAD PRACTICAL OBJECTIVES, AND THAT RELATED TEXTUAL PROBLEMS WITH STRAITS ARTICLES, IF ANY, WERE MINOR, WHEREAS ANY STRAITS GROUP FORMED BY CONFERENCE WOULD BE HIGHLY POLITICIZED AND DOOMED TO CONFRONTATION AND FAILURE BY ITS VERY COMPOSITION. WE SUGGESTED MALAYSIA PURSUE INFORMAL APPROACH, POSSIBLY BRINGING THE DIRECTLY CONCERNED STATES TOGETHER AND INFORMALLY AT APPROPRIATE TIMES, AND OFFERED TO WORK WITH GOM. OUR IMPRESSION IS THAT VORAH REALIZED FOR FIRST TIME WHY GOM PROPOSAL FOR STRAITS NEGOTIATING GROUPS AT LAST SESSION WAS SO STRONGLY RESISTED BY MARITIME STATES, AND WOULD BE INCLINED TO FOLLOW INFORMAL ROUTE IF IT YIELDS RESULTS.

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MRN: 1976KUALA 003826 SEGMENT NUMBER: 000002 ERROR READING TEXT INDEX
FILE; TELEGRAM TEXT FOR THIS SEGMENT IS UNAVAILABLE

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW OF THE SEA, MARINE TRANSPORTATION, NEGOTIATIONS, STRAITS, ARCHIPELAGOS
Control Number: n/a
Copy: SINGLE
Draft Date: 06 JUL 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: MartinML
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976KUALA03826
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: CORE1
Film Number: D760260-1183
From: KUALA LUMPUR
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760788/aaaaczvp.tel
Line Count: 147
Locator: TEXT ON MICROFILM, ADS TEXT UNRETRIEVABLE
Office: ACTION DLOS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: MartinML
Review Comment: n/a
Review Content Flags: ANOMALY
Review Date: 23 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <23 APR 2004 by CunninFX>; APPROVED <11 AUG 2004 by MartinML>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: LOS--MALAYSIA (STRAITS AND ARCHIPELAGOS)
TAGS: PLOS, EWWT, MY, US, JA
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006